

2001

# Craig J. Harris v. Bonnie Harris : Brief of Appellant

Utah Court of Appeals

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**IN THE UTAH COURT OF APPEALS**

450 South State Street, Salt Lake City, Utah 84111

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CRAIG J. HARRIS,  
Petitioner/Appellant,

v.

BONNIE HARRIS,  
Respondent/Appellee

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Appellate Court No. 20010341-CA

Priority 15

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**BRIEF OF APPELLANT**

Appeal from Fourth Judicial District  
Judge Ray M. Harding Jr., Presiding

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ATTORNEY FOR RESPONDENT:

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P.O. Box 756  
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**FILED**  
Utah Court of Appeals

MAR 26 2002

Paulette Stagg  
Clerk of the Court

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## **STATEMENT OF JURISDICTION OF THE APPELLATE COURT**

The Court of Appeals has jurisdiction in this matter pursuant to Section 78-2a-3(2)(h), URCivP—appeals involving domestic relation cases.

Since this domestic matter does not concern child custody or termination of parental rights, under the provisions of Rule 29(b) this matter has a priority of 15.

Case Number 20000037-CA before this Court is a companion to this.

## **STATEMENT OF ISSUES AND STANDARD FOR REVIEW**

For convenience in reference, Craig Jack Harris is referred to herein as “Craig.”  
Bonnie Harris is referred to herein as “Bonnie.”

### **Issue:**

Did the trial court err in ruling against an uncontested statement of facts?

### **Standard of Review:**

Since the facts were not contested the only issue before the trial court was one of law. Legal conclusions are reviewed for correctness. *State v. Heaton*, 958 P.2d 911, 914 (Utah 1998).

### **Issue:**

Did the trial court err as a matter of law in granting Respondent’s Motion to Strike?

### **Standard of Review?**

The trial court determined that Bonnie’s Motion to Strike in this case was authorized by law. That was a conclusion of law. Legal conclusions are reviewed for correctness. *State v. Heaton*, 958 P.2d 911, 914 (Utah 1998).

Under Rule 12(f) “the court may order stricken from any pleading any insufficient defense or any redundant, immaterial impertinent, or scandalous matter.” A Motion to Strike is also appropriate as to inadmissible evidence. **Howick v. Bank of Salt Lake**, 498 P.2d 352 (Utah 1972), citing 6 Moore Fed. Pro., at page 2817. Respondent’s Memorandum before the trial court cited no authority under law. None is known to apply to this case.

**Issue:**

Did the trial court err in granting summary judgment in Bonnie’s favor?

**Standard for Review:**

Granting Bonnie’s Motion to Strike constituted Summary Judgment against Craig. The party against whom the judgment on the pleadings has been summarily granted is entitled to have all the facts presented, and all the inferences fairly arising therefrom, considered in a light most favorable to him. **Morris v. Farnsworth Motel**, 123 Utah 289, 259 P.2d 297 (1953), extensively cited.

**Citation to Record Showing Preservation of Issue Presented for Review:**

The trial court determined that the Motion to Strike was justified as a matter of law and then the trial court granted a motion for summary judgment against Appellant.<sup>1</sup>

**RULES—INTERPRETATION OF WHICH ARE OF CENTRAL IMPORTANCE**

**Rule 12. Defenses and Objections.**

\* \* \*

(c) *Motion for judgment on the pleadings.* After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings

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<sup>1</sup> Record, 1397

are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such motion by Rule 56

\* \* \*

(f) *Motion to Strike.* Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within twenty days after the service of the pleading, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

\* \* \*

### **Rule 56. Summary Judgment.**

(a) *For claimant.* A party seeking to recover upon a claim, counterclaim or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.

(b) *For defending party.* A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought, may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

(c) *Motion and proceedings thereon.* The motion, memoranda and affidavits shall be filed and served in accordance with CJA 4-501. The judgment sought shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(d) *Case not fully adjudicated on motion.* If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) *Form of affidavits; further testimony; defense required.* Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers



or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

\* \* \*

### **STATEMENT OF CASE**

Through supplemental motion and affidavits captioned *Memorandum in Support of Motion Re: Order to Show Cause and Other Related Matters*, Craig set out a documented Statement of Facts as to how Bonnie obtained \$67,897.00 in excess of that granted to her by the trial court in its Decree.

Bonnie filed no Objection, taking no exception to Craig's "Statement of Facts." Instead, Bonnie filed a Motion to Strike, challenging the caption of the document and procedure.

Disregarding Craig's motion and supporting documents, the trial court granted Summary Judgment in Bonnie's favor by granting her Motion to Strike.

### **STATEMENT OF FACTS**

1. This is a second marriage for both parties. No children were born of this marriage and none were ever expected.<sup>2</sup> The parties separated in 1995 some time before this action was commenced.<sup>3</sup> Marital property constitutes approximately a million dollars.

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<sup>2</sup> Record, 13, Admitted in Answer, paragraph 3.

<sup>3</sup> Record, 1-3

2. The trial court set January 26, 1999 as the valuation/distribution date of marital property.<sup>4</sup> The CPA firm of Norman/Loebbecke, requested by Bonnie and stipulated by Craig, was appointed to assist the court.<sup>5</sup>

3. On December 28, 1999, Craig filed a Rule 59/60 *Motion for Reconsideration*, with the trial court, seeking clarification as to division of certain property, adding that,<sup>6</sup>

Since the trial the Respondent [Bonnie] has so interpreted the Decree, maneuvered the transfer of property, and failed to comply with requirements of the Court imposed upon herself so as to unlawfully transfer to herself a much greater cash dollar value than directed by the Court at trial.

4. On December 29, 1999, Bonnie filed a *Notice of Appeal*<sup>7</sup> as Case Number 20000037-CA before this Court. That matter is still pending appeal but does not include the supplemental proceedings that are the subject hereof.

5. Through supplemental proceedings before the trial court, on December 19, 2000,<sup>8</sup> Craig filed his *Motion Re: Order to Show Cause and Other Related Matters*, claiming that Bonnie had unlawfully transferred to herself a much greater cash dollar value and property than directed by the trial court under its Decree.

6. Attached to that Motion, Craig included a detailed Accounting, Affidavits and Exhibits that comprised 147 pages. Craig's Motion and Accounting to the trial

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<sup>4</sup> Record, 1330

<sup>5</sup> Record, 1401

<sup>6</sup> Record, p 655, paragraph 9.

<sup>7</sup> Record, 665.

<sup>8</sup> Record, 1096-1244.

court is included in the Addendum.<sup>9</sup> A full copy of that Memorandum included in the Addendum, including all allegations, facts and wording contained therein, is incorporated herein by reference and made a part hereof.

7. As set forth in Craig's Motion, Bonnie maneuvered the financial accounts, delayed the matter and reported that a warehouse had been burglarized. That claim was false. Evidence set forth in the Addendum reflect that:

- a. Bonnie had sole possession to a large secondary business/family storage warehouse located near the marital home;
- b. At one time Bonnie reported to the Pleasant Grove Police Department that the warehouse had been burglarized by forced outside entry through one of the overhead garage doors; and
- c. From personal examination at the warehouse — evidence, photographs, affidavit and descriptions taken by the Chief Engineer from that overhead garage door manufacturing company, it was determined that Bonnie's allegation of forced outside entry, burglary and theft by unknown persons was false:<sup>10</sup>

Photographs were taken of both the inside and outside of the door. Of particular interest was the examination of the hole that remained in the doorjamb from which the bottom lag screw had been removed.

It is my opinion, based upon experience in testing forces and observing the results of the force required to remove such lag screws, that the lag screw in question had not been forcibly

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<sup>9</sup> Record, 1097-1244.

<sup>10</sup> Record, 1191-1192.

removed from the outside. Someone had intentionally unscrewed the lag screw from the inside. The remaining hole in the doorjamb was consistent with having been physically unscrewed by some individual. Close up photographs were taken of the “L” bracket and remaining hole. Had that lag screw been removed by force from the outside, the remaining hold would have caused considerable damage to the wood. The “L” bracket would have been deformed and twisted, the track would have been twisted to some degree and the exterior of the door itself would have been warped and damaged.

On the exterior of the door were some small marks that appeared to be abrasions. Close-up photographs were taken of the abrasions on the outside of the door in the vicinity of the purported breach and entry. Such marks are not consistent with a forced entry.

My conclusion is that someone manually removed the interior lag screw with a wrench for the apparent purpose of making it appear that the door had been breached. Someone did what I observed with access to the inside of the building by keyed entry. I observed no evidence of forced entry. The observed “breach” of the door could have only been done from inside the storage building [warehouse].

8. Craig’s Motion and Accounting prayed that the trial court grant him judgement in his favor for the excess values taken by Bonnie.<sup>11</sup>

9. Choosing to make no *Objection* under the provisions of Rule 4-501, Bonnie just filed a *Motion to Strike*.<sup>12</sup>

10. On February 15, 2001, the trial court entered its written Ruling, giving Summary Judgment in Bonnie’s favor through granting her *Motion to Strike*.<sup>13</sup>

11. Among other things, the trial court’s Ruling held that Craig had no standing to claim recovery from Bonnie of property that Bonnie took from the

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<sup>11</sup> Record, 1224.

<sup>12</sup> Record, 1259

<sup>13</sup> Record, 1330

warehouse when such property belonged to Craig's sons or other relatives. That February 15, 2001 Ruling stated that,<sup>14</sup>

Petitioner [Craig] has no standing to claim recovery for items belonging to relatives. Respondent [Bonnie] is correct in asserting that affected individuals or business entities would have to file their own [separate actions and] claims [against Bonnie].

12. Bonnie's *Motion to Strike* and her memoranda in support of that Motion set out no reference to any Case Law, Rules or Statutes. The "Statement of Facts" made no reference to any portion of the record and was unsupported by affidavit or any documentation.<sup>15</sup>

13. Bonnie filed no Objection to Craig's Motion but opted instead to just file the *Motion to Strike*.<sup>16</sup>

14. No evidentiary hearing was held. No testimony was presented. Upon the pleadings on file, the trial court summarily ruled in Bonnie's favor.

### **SUMMARY OF ARGUMENT**

Not being supported by reference to any rule or case law, under the provisions of Rule 12(c), Bonnie's Motion to Strike must be interpreted as a motion for decision on the pleadings. Under the provisions of Rule 12(c), a motion for decision on the pleadings constitutes a Motion for Summary Judgment. Bonnie's Motion set forth no documented Statement of Facts or reference to the Record.

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<sup>14</sup> Record, 1330

<sup>15</sup> Record, 1259 and 1315.

<sup>16</sup> Record, 1259

In Craig's Motion he had provided the trial court an extensive and documented Statement of Facts that supported by 147 pages of evidence admissible under the provisions of Rule 56(e). As a matter of strategy, Bonnie determined to file no Objection to Craig's motion. Rather, she determined to file a Motion to Strike. However, Bonnie's Memorandum made making no reference to any documented facts, rules or case law.

Craig was entitled to Summary Judgment on the pleadings. Instead, the trial court granted summary judgment in Bonnie's favor by ordering that the entirety of Craig's pleading and Motion be stricken.

This appeal is taken from that Order.

### **ARGUMENT**

#### **Point 1**

The order of the trial court is reversible error as it constituted a ruling of summary judgment against Craig.

A *Motion to Strike* may be brought under the provisions of Rule 12(f), URCivP, in response to "any redundant, immaterial, impertinent, or scandalouse matter." Bonnie's Motion to Strike does not fall within Rule 12(f) nor is that Rule is never cited in any of Bonnie's pleadings.

A *Motion to Strike* may also be brought against inadmissible evidence, i.e. when supporting affidavits are insufficient under the requirements of the Utah Rules of Evidence. An affidavit may or may not measure up but Bonnie made no objection to the sufficiency of any of the documents/evidence that Craig filed as attachments to his

Motion. **Howick v. Bank of Salt Lake**, 498 P.2d 352 (Utah 1972), citing 6 Moore Fed. Pro., at page 2817.

An affidavit that does not measure up to the standards of 56(e) is subject to a motion to strike; and formal defects are waived in the absence of such a motion.

But Bonnie made no objection to any of the information contained in any of the Exhibits that Craig had filed. Nor did Bonnie make reference to any rule, case law or statute in support her Motion to Strike. Bonnie made no objection to any allegations that Craig made. Craig's *Motion for an Order to Show Cause and Other Related Matters* was brought before the trial court in good faith and all portions of the "Statement of Facts" were supported as required under the rules. A full copy of Craig's Motion before the trial court is enclosed in the Addendum to this Brief of Appellant.

It is not necessary to find fault with the nature of either side's form of pleadings.<sup>17</sup>

It is well settled that in determining whether the trial court properly characterized a document before it, we look to the substance of that document, and not merely to its caption. *DeBry*, 828 P.2d at 522; see also *Watkiss & Campbell v. Foa & Son*, 808 P.2d 1061, 1064 (Utah 1991) (an incorrect title placed upon a pleading is not a bar to the case); accord *Gallardo*, 800 P.2d at 817; *Armstrong Rubber Co.*, 657 P.2d at 1347-48.

However, there is no known, cited or referenced basis upon which Bonnie's *Motion to Strike* was made and Bonnie's Memorandum before the trial court made no reference to any rule, statute, case or authority.

Motions to strike are commonly made under the provisions of Rule 12(f):

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<sup>17</sup> *Brunetti v. Mascaro*, 854 P.2d 555 (UT App. 1993).

(f) *Motion to strike.* Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within twenty days after the service of the pleading, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

Bonnie's motion made no reference to Rule 12(f).

A motion to strike may also be made when affidavits do not meet the requirements of Rule 56(e), URCivP. Rule 56(e) requires that,

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein.

The reason Bonnie made no Objection to Craig's factual allegations is that Craig's Memorandum and Exhibits made extensive reference to the record, rules and case law. Craig's Memorandum did meet the rules of civil procedure, the rules of judicial administration and included admissible evidence and exhibits required for such motions. Bonnie selected not to challenge or contest any of Craig's Statement of Facts. Under the circumstances of the case Craig was entitled to summary judgment in his favor on his Motion. Craig's Motion and Memorandum met all of the requirements of Rule 56(e).

Rule 56(e), URCivP, provides that,

(e) *Form of affidavits; further testimony; defense required.* Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary



judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

But Bonnie made no objection under Rule 56(e) or any other specified rule.

Bonnie's claim in her Memorandum is that her *Motion to Strike* is appropriate because,<sup>18</sup>

The petitioner [Craig] and his attorney have never had an order to show cause issued with respect to their Motion.

It is true that Craig did not meet all of Bonnie's demands for transfer of all property without question. For that the trial court entered an order of contempt, giving Craig ten (10) days to comply.<sup>19</sup> That contempt was immediately purged and no penalty was ever imposed.

Under the rules, circumstances and pleadings, there was no possible way for Craig to anticipate that the trial court would not require Bonnie to answer to the charges made against her as extensively set forth in his *Motion for Order to Show Cause*. How could Craig even anticipate that there was any basis for a motion to strike when there was not? Bonnie's Motion to Strike makes no reference at all to Rule 56(e).

There were large pieces of equipment in the warehouse that required heavy moving equipment. Bonnie could not have cleaned out the warehouse without help.

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<sup>18</sup> Record, 1252, Bonnie's *Memorandum in Support of Motion to Strike*, page 8.

<sup>19</sup> Record, 1257, reference from Bonnie's *Memorandum in Support of Motion to Strike*, page 3, paragraph 6.

Why did Bonnie submit a false report to the Police that the warehouse had been burglarized? Bonnie's actions were intentionally and knowingly false. There is no basis upon which the trial court may support Bonnie's lies. But it did. The actions of the trial court far exceeded any discretion.

Since no authority is known or cited in her *Motion* or *Memorandum in Support of her Motion to Strike*, Bonnie's motion must fall under the provisions of case law and Rule 12(c) of the Utah Rules of Civil Procedure. Bonnie's *Motion to Strike* must be interpreted as a *Motion for Judgment on the Pleadings* brought before the court under the provisions of Rule 12(c), URCivP, as a "Motion for Judgment on the Pleadings,"

(c) *Motion for judgment on the pleadings.* After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

There is no other way to interpret Bonnies *Motion to Strike* except as a motion as judgment on the pleadings.

Making a calculated decision to file no Objection is very risky. When no Objection is filed as required under Rule 4-501, judgment may be entered in Craig's favor. Bonnie made a calculated strategy decision to only file a *Motion to Strike*. But there is no basis given for any motion to strike and none can be found in case law or in the rules. Bonnie has cited nothing in support of her motion that Craig's Accounting and prayer for relief and any request of Craig for judgment must be stricken.

Craig's Motion is supported by extensive reference to the Record, Affidavits and Exhibits. The substance of Bonnie's Motion to Strike must be interpreted as a Motion for Summary Judgment.

Craig's Motion met all of the requirements of Rule 4-501(2) "*Motions for Summary Judgment.*" Under Rule 4-501(2)(B) "*Memorandum in Opposition to Summary Judgment,*"

All material facts set forth in the movant's statement [Craig's Statement of Facts] and properly supported by an accurate reference to the record shall be deemed admitted for the purpose of summary judgment unless specifically controverted by the opposing party's statement [of facts].

There is no question that under that standard the actions of the trial court taken against Craig must be reversed and remanded. Bonnie chose not to make any objection to any of Craig's Statement of Facts.

Craig met all requirements of Rule 4-501 (2)(A) by first setting out a fully documented and complete "Statement of Facts." Once Bonnie decided to not meet the requirements of Rule 4-501, Craig was entitled to "Judgment on the Pleadings" in his favor.

#### **Point 2**

The trial court committed reversible error when it Ruled that a divorce court had no authority to resolve disputes over property of others that had been taken by Bonnie from the warehouse.

The domestic case of **D'Aston v. Aston**, 844 P. 2d 345 (UT App. 1992) is controlling. D'Aston dealt with the taking of property that belonged to others.

The Petitioner, Bruno D'Aston was a coin dealer. Pending the divorce, Dorothy D'Aston and her son Eryck B. Aston had taken coins that were being held by Bruno on consignment.

Eryck B. Aston appeals from an order and decree entered by the trial court awarding appellee, Bruno D'Aston, certain personal property seized from Eryck pursuant to a Writ of Execution and Assistance. On appeal, Eryck seeks an order quashing the writ, vacating the trial court's order and decree issued pursuant to the writ, and directing that all property seized from Eryck be redelivered to him. Eryck also claims the trial court erroneously awarded Bruno attorney fees as an item of costs. Bruno cross-appeals contending the appeal is moot, a contention we summarily reject. Except for the cost issue, we affirm.

In May of 1986, Bruno D'Aston filed a complaint against his wife and children seeking (1) a divorce from his wife, Dorothy D'Aston, (2) distribution of marital property between Bruno and Dorothy, and (3) a determination of the rights of his two adult children, Eryck and Lisa, to certain property. In the complaint, Bruno alleged that Eryck, in collusion with Dorothy, had stolen coins and other property from his car and motor home on April 30, 1986. Bruno claimed many of the allegedly stolen coins and silver bullion described in his complaint were in his possession by consignment from two individuals, Michael Graham and Al Schaefer. Accordingly, he sought an order compelling Dorothy and the children to return the allegedly stolen property. (Note 1)

\* \* \*

Pursuant to the decree, Bruno was awarded a 70% ownership interest in the allegedly stolen coins and other property, and Dorothy was awarded the remaining 30%. Bruno was also awarded possession of the coins he claimed to have held on consignment. The decree stated that if any of the coins and other property alleged to have been stolen from Bruno were found in possession of any of the parties to the action, it would be considered contempt of court.

Note 1: Shortly after Bruno reported the coins and other property stolen, he prepared for the police, from memory, a detailed list of many of the items missing. Included among this property were various coins, bullion and other personalty, such as camera lenses, carrying cases and other optical equipment.

Through the trial court's February 15, 2001 Ruling and subsequent Order, it refused to consider any evidence of Bonnie's wrongdoing.

Craig's accounting and Motion established that Bonnie had falsely reported to the Police Department that the warehouse had been burglarized. Pending the divorce, the warehouse contained property that belonged to Craig, AID Equipment Co., Craig's sons, his mother and other relatives.

At one hearing, Bonnie, speaking of her need to maintain the yard, asked for some hand tools (shovels and such things) that were in the warehouse. Consequently, under a Stipulation on the Record,<sup>20</sup> it was agreed that Bonnie would have time to take some "personal tools." Bonnie was to remove those tools before a certain date. After that date, Craig was entitled to take all other property in the warehouse.

Bonnie then stripped the entire warehouse of all items of any value except a large heavy steal gun vault. (See Addendum for photographs and details.) There was a lot of property in that warehouse.

In Craig's Motion, he asked the trial court to order the return of items he owned and items that belonged to others.

To that request, the trial court responded by issuing its Order to Strike Craig's Motion. In that action alone, the trial court granted Bonnie the benefit of her theft and wrongdoing, awarding her an additional amount of property valued at more than Sixty Thousand Dollars (\$60,000.00) in addition to that granted in the Supplementary Decree of Divorce.

Why? Only the trial court could explain and no explanation was given in the formal Order.

The trial court's Order on "Petitioner's Motion Re: Order to Show Cause and Other Matters and Respondent's Motion to Strike Motion Re: Order to Show Cause and Other Matters"<sup>21</sup> just simply stated,

The Court having heard and considered the oral arguments of the parties, having read and considered the memoranda and exhibits filed by the parties, having reviewed the file in this matter and now being fully advised in the premises, hereby orders, adjudges and decrees as follows:

1. The Respondent's Motion to Strike is granted as to all matters except for the Personal Property from the shed.
2. The Petitioner's Order to Show Cause is denied with respect to the Petitioner's claims to the personal property, all other claims having been stricken.
3. Attorney fees are denied.

### **CONCLUSION**

Bonnie's deception and taking of property was extensively documented in Carig's Statement of Facts. Since Bonnie made no objection Craig was entitled to Summary Judgment in his favor as prayed. The trial court's Ruling and Order that granted Bonnie's Motion to Strike must be set aside and summary judgment entered by the trial court in Craig's favor as prayed in his Motion.

### **RELIEF SOUGHT**

Craig prays that this Court reverse and remand this matter, directing the trial court to enter summary judgment in Craig's favor as prayed in his Motion and Memorandum as follows:

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<sup>20</sup> Record, 1239, in Addendum, and Transcript of Hearing, Record, 1163, page 5, lines 1-13.

- A. \$23,000.00 for items “missing” from the storage building;
- B. \$4,600.00 for Craig’s personal property taken from the storage building;
- C. \$2,925.00 for AID Equipment property taken from the storage building;
- D. \$3,734.00 for Dick Harris’ property taken from the storage building;
- E. \$8,600.00 for Troy and Scott Harris’ property taken from the storage building;
- F. \$4,958.00 for overage taken from Craig’s MONY life account;
- G. \$3,787.61 excess interest assessed from January 26, 1999;
- H. Since the total amount set forth above constitutes a value of \$67,897.00 actual loss, Craig prays that a penalty of an additional amount of \$67,897.00, double the amount unlawfully taken, be awarded to Craig for a total of \$135,794.00 plus interest and that such judgment shall be augmented in the amount of reasonable costs and attorney’s fees expended in collecting said judgment by execution or otherwise as shall be established by affidavit; plus
- I. Return of such attorney fees and costs previously awarded to Bonnie and award of attorney fees and costs to Craig as the Court may determine; and
- J. Such additional and further relief as the Court may deem just.

#### **ADDENDUM**

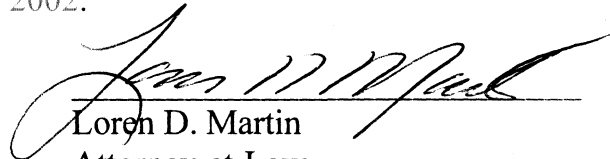
- 1. **Record, 1244** — Craig’s Memorandum in Support of Motion Re: Order to Show Cause and Other Related Matters;

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<sup>21</sup> Record, 1396-1397.

2. **Record, 1248** — Bonnie's Memorandum in Support of Motion to Strike Motion Re: Order to Show Cause and Other Matters;
3. **Record, 1266** — Craig's Objection to Bonnie's Motion to Strike;
4. **Record, 1315** — Bonnie's Memorandum in Opposition to "Petitioner's Objection to Motion to Strike Motion Re: Order to Show Cause and Other Matters;
5. **Record, 1330** — Ruling; and
6. **Record, 1397** — Order on "Petitioner's Motion Re: Order to Show Cause and Other Matters and Respondent's Motion to Strike Motion Re: Order to Show Cause and Other Matters.


DATED: this 28 day of March, 2002.

  
Loren D. Martin  
Attorney at Law

#### **PROOF OF SERVICE**

I hereby certify that the foregoing BRIEF OF APPELLANT was lodged with the Supreme Court and placed in the US Mail, postage prepaid on the 28 day of March, 2002 to the following:

Charles A. Schultz  
PO Box 564  
Pleasant Grove, Utah 84062

  
Shauna Sanchez-Maldonado  
ParaLegal